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No.

In the Supreme Court of the United States

Barbara Doran,
Petitioner

v.

Carnival Corporation d/b/a Carnival Cruise Lines,
Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case arises from personal injuries sustained by your petitioner, Barbara Doran, aboard a cruise ship. The action was filed in the United States District Court located approximately ten blocks from the vessel's berth in her home port of New Orleans, Louisiana. New Orleans is the only domestic port of call for the vessel at the present time and at the time of the filing of the suit. The trial court recognized that the vessel's crew could only be subject to trial subpoenas issued from that court.

On the date of the vessel's departure, prior to boarding the vessel, the passenger was presented with a "Guest Ticket Contract" containing a forum selection clause virtually identical to the one at issue in the case of *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991). Both the trial court and the appellate court held that the clause was part of a maritime contract and therefore enforceable although no notice of the forum selection clause was ever provided to the passenger prior to the date of the vessel's departure or at the time that the ticket was purchased. Furthermore, at the time that notice was first provided to the passenger and at all times subsequent to the purchase of the ticket, she was subject to a cancellation penalty.

The questions presented for review are:

I. DOES THIS COURT'S DECISION IN *THE MAJESTIC* PREVENT THE ENFORCEMENT OF A FORUM SELECTION CLAUSE CONTAINED IN A PASSENGER TICKET THAT IS NOT A MARITIME

CONTRACT BETWEEN THE PARTIES TO THE LAWSUIT?

2. DOES THIS COURT'S DECISION IN *CARNIVAL CRUISE LINES v. SHUTE* PERMIT A CRUISE LINE TO ENFORCE LIMITATIONS CONTAINED IN A PASSENGER TICKET THAT RESTRICT THE RIGHTS OF A PASSENGER WHILE CONCURRENTLY IMPOSING A PENALTY UPON THE PASSENGER WHO FAILS TO CONSENT TO THE TERMS OF THE TICKET?

3. DOES THIS COURT'S DECISION IN *CARNIVAL CRUISE LINES v. SHUTE* ALLOW FOR A PASSENGER'S PERSONAL INJURY ACTION TO BE BROUGHT IN THE VESSEL'S HOME PORT AND ONLY DOMESTIC PORT OF CALL WHERE THE VESSEL'S CREW ARE NOT SUBJECT TO TRIAL SUBPOENAS IN THE FORUM DESIGNATED BY THE FORUM SELECTION CLAUSE?

4. DOES THIS COURT'S DECISION IN *CARNIVAL CRUISE LINES v. SHUTE* PRECLUDE A VENUE ANALYSIS OF FORUM SELECTION CLAUSES IN ACCORDANCE WITH THE FACTORS SET FORTH IN *STEWART ORGANIZATION INC. V. RICOH*?

LIST OF PARTIES

All parties to this litigation are named and identified in the caption of this petition.

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2000

Barbara Doran,
Petitioner

v.

Carnival Corporation d/b/a Carnival Cruise Lines,
Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

Barbara Doran respectfully petitions for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The United States Court of Appeals for the Fifth Circuit did not issue a published opinion in this case pursuant to Rule 47.5 of the Local Rules for the United States Court of Appeals for the Fifth Circuit. The ruling of the trial court is also not reported. Both decisions have been reprinted in the appendix attached hereto.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its judgment on May 3, 2000. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(l).

FEDERAL PROVISIONS INVOLVED

This case concerns legal issues arising under the general maritime law relating to the enforcement of terms contained in a vessel passenger ticket. The decisions of the lower courts have created a conflict between two decisions of this Court, *The MAJESTIC*, 166 U.S. 375 (1897) and *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991).

STATEMENT OF THE CASE

Petitioner, Barbara Doran, suffered personal injuries while traveling aboard a passenger vessel operated by Carnival. She brought suit against Carnival in the United States District Court for the Eastern District of Louisiana invoking both diversity and admiralty jurisdiction. As a precautionary matter, she also filed suit in the United States District Court for the Southern District of Florida within the time period contained in her passenger ticket in the event that her challenge to the forum selection clause was unsuccessful.

Carnival operated the Liberian flagged vessel M/V CELEBRATION from her home port of New Orleans. The Port of New Orleans is also where the passenger had obtained her ticket and boarded the vessel on the date of the

vessel's departure. It is also significant that at the present time, New Orleans is the vessel's only port of embarkation and debarkation, as well as the vessel's only port of call located in the United States. The trial court noted that federal trial subpoenas for the vessel's crew could only be issued in the Eastern District of Louisiana.

Carnival objected to the venue of a lawsuit that was brought in a federal court located approximately ten blocks from where the cruise ship docks. Therefore, Carnival sought dismissal of the case based upon the enforcement of a forum selection clause that was incorporated into the passenger ticket issued to the petitioner. Carnival filed a motion to dismiss for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3). Alternatively, Carnival requested that the venue be transferred to the United States District Court for the Southern District of Florida.

In support of the motion, Carnival relied exclusively upon the forum selection clause contained in the passenger ticket contract and this court's decision in *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991). The trial court found that the clause was enforceable in accordance with *Shute* and dismissed the action. The appellate court affirmed the trial court's holding. The passenger is now seeking a writ of *certiorari* in order to recognize that there should be limitations placed upon the enforcement of forum selection clauses in passenger tickets and that these tickets do not impose any independent obligations upon the passenger unless they are part of a maritime contract.

Indeed, the forum selection clause is entirely incon-

sistent with the general maritime law of contracts as pronounced by this Court in *The MAJESTIC*, 166 U.S. 375 (1897). In particular, the forum selection clause was not a part of any maritime contract between the parties at the time that passage aboard the vessel was booked and therefore it is unenforceable. By virtue of affidavits submitted by Carnival, the record irrefutably establishes that no notice of the clause was ever provided to the passenger until the date of boarding. Furthermore, subsequent to the purchase of the ticket, the passenger was subject to a cancellation fee if she refused to acquiesce in the terms and conditions of the ticket.

The passenger also submits that the enforcement of the forum selection clause was not mandated by *Carnival Cruise Lines, Inc. v. Shute*. The *Shute* decision has been misinterpreted by the lower courts resulting in automatic enforcement of the forum selection clause in cases where the policies underlying the *Shute* decision are entirely absent. Indeed, by requiring that this case be brought in Miami, Florida, a venue entirely lacking in any significant contact with the instant claim for personal injuries, the enforcement of the forum selection clause is fundamentally unfair and clearly constitutes overreaching on the part of the vessel operator.

The clause is also fundamentally unfair, overbearing and unreasonable by virtue of the fact that provisions restricting the rights of the passenger are placed in the ticket which is not given to the passenger until after the purchase price has been paid. Contrary to the holdings of the lower courts, a full refund for cancellations is only available if the

cancellation is made more than seventy days before the vessel's departure. R.D. No. 15, Ex. A, p. 33. Therefore, the clause is fundamentally unfair, unreasonable and the result of overreaching on the part of Carnival as it restricts the passenger's rights subsequent to the formation of any maritime contract and is only provided to the passenger after the ticket has been purchased.

REASONS FOR GRANTING THE PETITION

1. The Decision of the Fifth Circuit is in Conflict with the Decision of this Court in *The MAJESTIC*, 166 U.S. 375 (1897) as it Permits Enforcement of Provisions in a Passenger Ticket that are not a Part of the Contract of Passage

Both the trial court and the appellate court held that the passenger ticket presented to Ms. Doran immediately prior to boarding the vessel constituted a maritime contract between the parties. In support of this legal conclusion, the lower courts cited to the case of *Carnival Cruise Lines, Inc. v. Shute*. It is respectfully submitted that this is an incorrect interpretation of the *Shute* decision. More importantly, it is in express conflict with this Court's ruling in the case of *The MAJESTIC*, 166 U.S. 375 (1897).

A ticket generally constitutes only a receipt for the passenger's fare, although in certain circumstances it may also serve as a contract or evidence of a contract. *Block v. Compagnie Nationale Air France*, 386 F.2d 323, 336 (5th Cir. 1967); *Alaska Airlines, Inc. v. Austin*, 801 F. Supp. 760, 769 (D.D.C. 1992); 13 C.J.S. *Carriers* §499b. This propo-

sition was specifically incorporated into the general maritime law in reference to vessel passenger tickets by this Court's decision in *THE MAJESTIC*. In *The MAJESTIC*, a limitation of liability provision printed on the back of a passenger ticket was held to be unenforceable because it had not been contained within the actual contract for passage. *THE MAJESTIC*, 166 U.S. at 381.

This rule of the general maritime law was not effected by the subsequent decision in *Shute*. The *Shute* decision expressly refused to address the issue of the passenger's notice of the terms and conditions contained in the ticket at the time that the contract was formed. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. at 590. This was because the passengers had conceded that they did have adequate notice of the forum selection clause at the time of contract formation. *Id.* The *Shute* court therefore allowed for enforcement of the clause because the passengers had notice of the clause before they entered into the contract of passage and it was thus presumed that the clause could be rejected by the Shutes "with impunity" at the time of contract formation. *Id.*

The lower courts' decisions therefore fail to recognize that in order for the ticket to constitute a binding contract between the parties, its terms and conditions must be made known at the time that the contract is formed or otherwise incorporated into the contract by reference at the time of contract formation. *THE MAJESTIC*, 166 U.S. at 385; *see also*, Annot. 5 A.L.R. Fed 394, 409-12(Federal View as to Effect of Conditions Appearing on Back of Passenger's Ticket for Ocean Voyages, §4b). Under the general maritime law of contracts, if additional terms are to be added to the

contract, these terms must be supported by separate consideration. *United States v. Waterman S.S. Corp.*, 471 F.2d 186, 189 (5th Cir. 1973); *See generally*, 3WILLISTON ON CONTRACTS §7:36 (4th ed. 1992); RESTATEMENT OF CONTRACTS (2nd) §73 (1981). In this case however, the forum selection clause and other restrictive terms and conditions of the ticket were not supported by additional consideration. Instead, the very same ticket informed the passenger well after the contract of passage had been formed that she would forfeit her fare if she did not board the vessel upon the date of departure.

Accordingly, the lower courts committed error in enforcing the forum selection clause against the claims of Barbara Doran. This error arises from the failure to recognize that the clause was unenforceable under this Court's decision in *The MAJESTIC*. As a consequence, there is a real and direct conflict with a prior decision of this Court on a federal question that satisfies the requirements for the issuance of a writ of *certiorari* as set forth in Rule 10(c) of the Rules of the Supreme Court of the United States. This Court should therefore grant a writ of *certiorari* in order to establish definitively that a forum selection clause and any other restrictive language contained in a passenger ticket do not have any legal effect unless they are contained within an enforceable maritime contract.

II. This Case Presents Important Questions Concerning the Scope and Application of *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991) and the Procedures to be followed by a Trial Court in Enforcement of a Forum Selection Clause contained in a Passenger Ticket

Even if this Court finds that there is no conflict presented with its decision in *The MAJESTIC*, a grant of a writ of *certiorari* is warranted in this case pursuant to Rule 10(c) of the Supreme Court Rules as the case presents an important question of federal law. More specifically, this case presents a rare opportunity for this Court to revisit and refine its holding in *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991). The *Shute* decision was very limited in its scope and should not be extended to cases where the policy reasons in support of the clause's enforcement are absent.

It must be remembered that in *Shute*, the Supreme Court was only called upon to review the holding of the United States Court of Appeals for the Ninth Circuit that the forum selection clause was unenforceable. This Court was very careful to note the limitations placed upon the scope of its inquiry. *Carnival Cruise Lines v. Shute*, 499 U.S. at 590. The decision rejected the passenger's single challenge to the clause, based upon inconvenience, because it was unsupported by the record. *Id.*

Respectfully, it must also be recognized that the *Shute* decision has been a heavily criticized decision that was decided on the basis of improvident stipulations and an inadequate record. *See generally*, Jarvis, 10 BENEDICT ON ADMIRALTY, § 4.02 (commentary has been generally

unfavorable); Taylor, *The Forum Selection Clause: A Tale of Two Concepts*, 66 Temp. L. Q. 785, 849 n. 382 (1993)(commentators have uniformly criticized the court's reasoning). Lower courts have interpreted *Shute* to require virtually automatic enforcement of forum selection clauses and other provisions contained in the passenger ticket that restrict the rights of the passengers. Due to the recent and increasing popularity of cruise ship travel, the holding in *Shute* requires a more thorough analysis particularly in light of the uncritical and broad effect that the decision has had in the litigation of passengers' claims. There are several issues in the *Shute* decision that require further examination by this Court.

For example, *Shute* recognized that the decision in *The BREMEN v. Zapata Corporation,* 407 U.S. 1 (1972) was the starting point for the enforcement of a forum selection clause and that the realities of non-negotiated form passage contracts required a refined *BREMEN* analysis. *Id.* at 593. However, *Shute* did not go any further than this in defining the refined *BREMEN* analysis. Indeed, it was expressly held that key factual differences between the passenger ticket and the *BREMEN* towing contract precluded "an automatic and simple application of *The BREMEN's* general principles to the facts *Id.* at 591. Nonetheless, as was done in this case, the lower courts have consistently required the passenger to meet the *BREMEN* test and demonstrate that the forum was so inconvenient that it effectively deprives the passenger of their day in court, R.D. No. 16, p. 4, although Ms. Doran did not seek to avoid enforcement ofthe forum selection clause on the mere grounds of inconvenience.

Shute suggested several exceptions to the forum

clause's enforcement that are also present in this case. *Shute* recognized that all forum selection clauses were subject to judicial scrutiny for fundamental fairness, *Id.* at 595, an issue not raised by the passenger in *Shute*. Thus, the issue of fairness raised in *dicta* in *Shute* has never been expressly addressed by this Court.

The petitioner has initially challenged the forum selection clause as unfair by not providing the passenger with notice of restrictive conditions until after the ticket had been purchased and the passenger was subject to a cancellation penalty. It is the imposition of the forum selection clause concurrently with the penalty cancellation provision that is fundamentally unfair and constitutes overreaching on the part of the cruise-ship operator. This issue was not passed upon by the *Shute* court due to the passenger's stipulations.

The issue of fairness is also raised by the passenger's arguments that a forum selection clause should not be enforced in a vessel's home port. This argument addresses another exception to the enforcement of the terms of the ticket that was suggested in *Shute* which is that a forum selection clause should not be enforced if a case is inherently more suited for resolution in a forum other than the designated forum. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. at 594. In this case, the passenger is attempting to create a home port/port of embarkation exception under the general maritime law that provides the passenger with access to trial evidence that would be unavailable in the designated forum.

It must be recognized that New Orleans is a potential forum for Carnival simply by virtue of the fact that it operates a cruise vessel from this port. Carnival is thereby exposed to a variety of potential suits for maritime torts and contracts in New Orleans. Simply because of the forum selection clause contained in the passenger's ticket, only passengers are deprived of this forum that is available to every other person damaged by the operation of M/V CELEBRATION.

Thus, a home port/port of embarkation exception serves an important function under the general maritime law in affording compulsory process that is otherwise unavailable by the nature of maritime operations. Indeed, international treaties generally allow for suit to be brought in a vessel's port of embarkation. Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, Dec. 13, 1974, Art. 17. Although the United States is not a signatory nation to this treaty, there is no compelling reason for a Panamanian corporation operating a Liberian flagged vessel from New Orleans to escape the trial court's subpoena power through the enforcement of the forum selection clause.

Finally, this case allows this court to reconcile *Shute* and the refined *Bremen* analysis with its procedural treatment of forum selection clauses in diversity cases. In *Stewart Organization, Inc. v. Ricoh Corporation*, 487 U.S. 22 (1988), it was held that a forum selection clause was not dispositive in determining whether a trial court should maintain venue over an action. *Stewart Organization, Inc. v. Ricoh*, 487 U.S. at 31. Under federal procedural law in a diversity case, a forum selection clause is only one of

several factors to be examined in determining which venue is proper for an adjudication of the case. *Id.* at 33.

According to a *Stewart* analysis, the inability to subpoena trial witnesses would be grounds alone for refusing to enforce the forum selection clause because the ability to obtain live trial testimony through the use of compulsory process is the most important factor to be considered. 15Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* §3851 (2d 1986). Thus, under the *Stewart* approach, the enforcement of a forum selection clause is a procedural issue. In the absence of a maritime contract, a trial court is free to exercise its discretion and resolve the issue as a procedural matter in accordance with *Stewart*. Accordingly, this case provides this Court with the opportunity to reconcile the *Shute* decision with its prior holding in *Stewart Organization, Inc. v. Ricoh.*

CONCLUSION

As a result of transoceanic air travel, vessel passenger travel declined from 1958 to 1980 which in turn diminished the significance of cruise ship litigation as a part of the general maritime law. 10BENEDICT ON ADMIRALTY, §1.02. More recently, the cruise ship industry has enjoyed spectacular growth carrying millions of passengers a year from American ports aboard foreign flagged vessels. *Ibid.* As a consequence of these flags of convenience, federal legislation is often ineffective in protecting passengers who travel aboard these vessels.

It is necessarily incumbent upon the federal judiciary

to protect the rights of the passenger through the development of a body of general maritime law applicable to cruise ship litigation. It is therefore imperative that this Court reassert the rule of contract law established in its decision in *The MAJESTIC*. Uniformity is critical because cruise ships depart from ports throughout the United States that are located in various judicial circuits.

This case is of particular significance because of its unique posture as noted by the trial court. There are few cases available for review by this Court, since most trial courts simply transfer the venue of the case and thereby preclude appellate review. It is therefore respectfully submitted that this case presents this Court with an important opportunity to develop the general maritime law in respect to cruise ship litigation by exercising jurisdiction through a writ of *certiorari*.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED
MAY 03 2000

No. 99-31042
Summary Calendar

BARBARA DORAN,
Plaintiff-Appellant,

versus

CARNIVAL CRUISE LINES, INC.,
Defendants,

CARNIVAL CORPORATION, (erroneously sued as Carnival Cruise Lines, Inc.),
Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(99-CV-800-F)

Before SMITH, BARKSDALE, and PARKER, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Regarding the dismissal of Barbara Doran's personal injury action, at issue is the enforceability of a forum selection clause in a cruise passenger's ticket. We **AFFIRM**.

Doran, a resident of Canada, purchased a ticket on 26 March 1998 for a one week cruise aboard Carnival's ship, the M/V CELEBRATION. Pursuant to a contract with the National Film Board of Canada, Doran was preparing a documentary on "romance" novels, the cruise's theme.

Doran received the ticket upon boarding the ship in New Orleans, Louisiana, on 17 April 1998. She had the option of receiving it earlier. It included a forum selection clause identical to that upheld in ***Carnival Cruise Lines, Inc. v. Shute***, 499 U.S. 585 (1991), requiring litigating all disputes in Florida.

During an outdoor reception, Doran was struck by a falling metal pole. She filed suit in the Eastern District of Louisiana. Carnival moved to dismiss for improper venue, contending the forum selection clause required venue in Florida.

The district court granted Carnival's motion and dismissed the action. It held: (1) the ticket is a maritime contract governed by maritime law; (2) forum selection clauses are *prima facie* valid; and (3) Doran failed to prove enforcement of the clause was either unfair, unreasonable, a result of fraud or overreaching, or deprived her of her day in court.

We review the enforceability of a forum selection

clause *de novo*. ***Mitsui & Co. (USA), Inc. v. Mira M/V***, 111 F.3d 33, 35 (5th Cir. 1997).

A forum selection provision in a written contract is *prima facie* valid and enforceable unless the opposing party shows enforcement would be unreasonable. ***M/S Bremen v. Zapata Off-Shore Co.***, 407 U.S. 1, 10 (1972). The presumption may be overcome by showing the provision is unreasonable under the circumstances. **Id.**

"The burden of proving unreasonableness is a heavy one, carried only by a showing that the clause results from fraud or overreaching, that it violates a strong public policy, or that enforcement of the clause deprives plaintiff of his day in court." ***Mitsui***, 111 F.3d at 35 (citation omitted) . Essentially for the reasons stated by the district court, the dismissal was proper. ***Doran v. Carnival Cruise Lines, Inc.***, No. 99-800 (E.D. La. 27 Aug. 1999).

AFFIRMED

APPENDX B

FILED
Aug 26' 99

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

BARBARA DORAN	*	CIVIL ACTION
VERSUS	*	NO. 99-800
CARNIVAL CRUISE LINES, INC.	*	SECTION "F"

ORDER AND REASONS

Before the Court is defendant's Motion to Dismiss and/or Transfer and For Sanctions. For the reasons that follow, the motion to dismiss is GRANTED and the motion for sanctions is DENIED.

Background

The plaintiff, Barbara Doran, filed this lawsuit on March 10, 1999, seeking damages for personal injuries she suffered while on a cruise ship owned and operated by defendant Carnival Cruise Lines, Inc. On April 17, 1998, the plaintiff boarded Carnival's ship the M/V CELEBRATION for a one week cruise, the theme of which was centered upon romance novels. The plaintiff was sailing on this particular cruise because she had been commissioned by the National Film Board of Canada to prepare a documentary on the subject of romance novels. During the filming of an outdoor

reception, the plaintiff was injured when a metal pole was blown off the deck above her and hit her in the head. As a result of the accident, she sustained a fracture to a bone which caused a cervical disc injury and tendinitis in her shoulder. The defendant now moves under Rule 12(b) (3) to dismiss this matter for improper venue on the basis of a forum selection clause, or, in the alternative, to transfer this lawsuit the United States District Court for the Southern District of Florida.

I. Motion to Dismiss

A passenger ticket for an ocean voyage is a maritime contract governed by general maritime law, Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991). In general, forum selection clauses are deemed to be *prima facie* valid and should be enforced unless shown to be unreasonable under the circumstances. M/S Bremen v. Zapata Offshore Co., 407 U.S. 1, 10, 92 S. Ct. 1907, 1913, 32 L.Ed.2d 513 (1972). Forum selection clauses will be enforced unless the provision was procured by fraud or enforcement would be unreasonable or unjust. Id. The burden of proof for a party seeking to avoid a contractual forum selection clause is a heavy one: "[I]t should be incumbent on the party seeking to escape his contract to show that trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court." 407 U.S. at 18, 92 S. Ct. at 1917.

The plaintiff first asserts that the forum selection clause is unenforceable because it was obtained by over-

reaching on the part of Carnival. Specifically, the plaintiff argues that the enforcement of the clause in her situation would be unreasonable because she had no opportunity to reject the ticket without forfeiture of her fare. The Court is not persuaded.

The plaintiff invokes Corna v. American Hawaii Cruises, 794 F. Supp. 1005 (D. Haw. 1992) as support for her argument. In Corna the trial court refused to enforce a forum selection clause on the ground that the forum selection clause would operate unfairly because the plaintiffs had no opportunity to reject their tickets without forfeiting their entire fare. Id. at 1011-12. The Corna case, however, can be easily distinguished from the present case. The plaintiffs in Corna were standby passengers who booked their trip at the last minute and could not have received their tickets earlier. In addition, it would have been impossible for the plaintiffs to comply with the cancellation policy without forfeiting their entire fare because they only received their tickets two to three days before departure.[1] To the contrary, Ms. Doran was not a standby passenger. She booked and paid for her ticket more than three weeks prior to the date of departure. [1] Moreover, she does not claim that she was prevented from obtaining her tickets or information regarding its terms at an earlier date. The plaintiff chose to wait to pick up her tickets at the time of departure. See Hicks v. Carnival Cruise Lines,

[1] The standard passenger ticket requires that the passenger cancel four days or more from the date of sailing, otherwise the passenger's entire fare is forfeited.

Inc., No. 93-5427, 1994 WL 388678 at *4-5 (E.D. Pa. 1994).[2] Thus, the plaintiff did have the opportunity to read and reject the terms of the passenger ticket without forfeiting her fare.

Next, the plaintiff asserts that enforcement of the forum selection clause will deprive her of her day in court because it deprives her of the ability to call crewmembers as live witnesses at trial. The plaintiff argues that trial in Florida will make it virtually impossible for her to call crewmembers as live witnesses because the crewmembers would only be subject to subpoena in Louisiana and not in Florida. She says that this makes enforcement of the forum selection clause fundamentally unfair.

The Court finds that there is no evidence that trial in the contractual "forum will be so gravely difficult and inconvenient that [she] will for all practical purposes be deprived of [her] day in court." 407 U.S. at 18, 92 S. Ct. at 1917. While the plaintiff's preference for calling the crewmembers as live witneeses at trial is understandable, her inability to call live witnesses (as opposed to deposition witnesses, for example) hardly deprives the plaintiff of her day in court.

Finally, the plaintiff maintains that this suit can be brought in this forum based on amendments to 46 U.S.C. §183c. The plaintiff asserts that this statute expressly prohibits enforcement of the forum selection clause in this case because the suit was brought in the port of embarkation.

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[2] In Hicks, the court found that a forum selection clause was valid and enforceable when the plaintiff had ample time to obtain and reject the terms of the passenger ticket without forfeiting her entire fare.

Again, the Court is not persuaded. The current version of Section 183c, which was enacted in December 1993, is identical to the version which was interpreted by the Supreme Court in Carnival Cruise Lines v. Shute, 499 U.S. 585, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991).[3] In Shute, the Supreme Court expressly declared that Carnival's forum selection clause did not violate Section 183c. Thus, Shute controls the disposition of this case. See Padel v. Carnival Corporation, No. 97-1936, 1997 WL 732424, at *2 (E.D. La. Nov. 24, 1997) (rejecting argument that Shute was legislatively overruled after Congress amended Section 183c to same version that was considered by Supreme Court in Shute); Launey v. Carnival Corp., No. 97-1470, 1997 WL 42605, at *1-2 (E.D. La. July 25, 1997) (same); Compagno v. Commodore Cruise Lines, Ltd., No. 94-1814, 1994 WL 462997, at *1-2 (E.D. La. Aug. 19, 1994)(same). Because the forum selection clause at issue is enforceable under federal law, this Court is an improper venue for the disposition of the case. Thus, the defendant's Motion to Dismiss is GRANTED.[4]

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3 Section 183c provides that:

> It shall be unlawful for the ... owner of any vessel transporting passengers between ports of United States or between any such port and a foreign port to insert in any ... contract ... any provision or limitation ... (2) purporting in [the event of death or injury] to lessen, weaken, or avoid the right of any claimant to a trial by a court of competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor. All such provisions or limitations contained in any such ... contract ... are declared to be against public policy and shall be null and void and of no effect.

4 Ordinarily, the Court would transfer this case under 28 U.S.C. §1404(a). However, because the plaintiff has already filed suit in the Southern District of Florida, dismissal rather than transfer is more appropriate.

II. Motion for Sanctions

The defendant also moves for sanctions against the plaintiff for failing to abide by the forum selection clause and filing suit in this district. Becauee the Court finds that the plaintiff has made a good faith argument against the enforcement of the forum selection clause, the Court will not impose sanctions.

Accordingly,

IT IS ORDERED: that defendant's motion to dismiss is GRANTED and defendant's motion for sanctions is DENIED.

New Orleans, Louisiana, August 26, 1999.

/s/ Martin L. C. Feldman
MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE